

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NRT BUS, INC.

and

CASE 01-CA-268388

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 170

Colleen Fleming, Esq.,
for the General Counsel.

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for the Respondent.

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for the Charging Party.

DECISION

STATEMENT OF THE CASE

ROBERT A. RINGLER, Administrative Law Judge. This case was heard on June 15 and 16, 2021. The complaint alleged, inter alia, that: NRT Bus, Inc. (NRT or the Respondent) assumed the school bus operations previously performed by First Student, Inc. (First Student) at the Westborough, Massachusetts public school system (Westborough) in basically unchanged form; First Student had previously recognized the International Brotherhood of Teamsters, Local 170 (the Union) as the exclusive collective-bargaining representative of a unit of school bus drivers at Westborough; following NRT's takeover at Westborough, it retained a majority of the former First Student drivers; and NRT, therefore, violated §8(a)(1) and (5) of the Act by failing to recognize the Union as the exclusive collective-bargaining representative of Westborough's drivers.

Although NRT concedes most of these allegations, it mainly denies that the existing First Student unit remains appropriate and avers that a larger unit of driving personnel assigned to its Hudson, Massachusetts terminal, which includes Westborough's drivers and driving personnel from 4 other local school districts, is the only appropriate unit. On this basis, NRT contends that the Union no longer represents a majority of employees in the appropriate larger unit and that its decision to refuse recognition was valid. NRT's position, as will be discussed, is not supported by the record or Board precedent. I, therefore, find that NRT was a successor and unlawfully failed to recognize the Union as the exclusive representative of the former First Student drivers at Westborough. On the record, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

5 NRT, a corporation, provides bus services to several school districts in Massachusetts. Annually, it derives gross revenues exceeding \$250,000, and purchases and receives at its Hudson, Massachusetts terminal goods exceeding \$5,000 directly from points outside of Massachusetts. It is, thus, engaged in commerce under §2(2), (6) and (7) of the Act. The Union
10 is also a §2(5) labor organization.

II. UNFAIR LABOR PRACTICES

A. *Unionization of First Student's Drivers at Westborough*

15 On July 19, 2019, the Westborough drivers in the following appropriate collective bargaining unit (the Westborough Unit) voted to unionize:

20 All full-time and regular part-time school bus drivers (including 7-D van drivers) [employed by First Student at Westborough]; but excluding all other employees, clericals, guards and supervisors as defined by the Act.

(JT Exhs. 1, 2, 19). On December 17, 2019, the Union and First Student entered into a collective-bargaining agreement, which ran from September 1, 2019 to August 31, 2024. (JT
25 Exh. 3).

B. *Westborough Awards NRT its School Transportation Contract*

30 In late-2019, Westborough sought bids for its school bus services. (JT Exh. 4). NRT was awarded the bid. On January 22, 2020, Cindy Crowley, Westborough's School Transportation Coordinator, advised the Westborough Unit drivers about this transition:

35 [T]he District went out to bid for a new five year school transportation contract NRT was ... the lower financial bid [and] the School Committee voted ... to contract with NRT. The contract is for five years and starts July 1, 2020

40 [W]e value you as Westborough drivers and our parents love you [and] we ask that you remain with Westborough. The new transportation contract provides... [that,] "... it is the expressed wish of the District that the current drivers be offered employment by successive Contractor, subject to job availability and Contractor employment qualifications."

(GC Exh. 11). On February 10, 2020, NRT and Westborough finalized a 5-year school

¹ Unless otherwise stated, factual findings arise from joint exhibits, stipulations, and undisputed evidence.

transportation contract (the transportation contract). (JT. Exh. 4).

C. Majority of Westborough Unit Drivers Hired by NRT

On February 26, 2020, Westborough emailed the Westborough Unit drivers, encouraged them to apply to NRT for their prior jobs, and provided a link for them to do so. (GC Exh. 10). This email stated, in relevant part, that:

NRT has indicated ... that they will hire ... you if you have a valid license and ... good driving record This is for both the CDL and 7D drivers. We will monitor this process

We realize that in the past we could have done a better job in collaborating with you Some examples of positive changes that we anticipate ... at the school district ... will be, to have bi-monthly driver ... meetings, inviting drivers to our district-wide employee First Day BBQ, and much better ... communications. We ... value you and your expertise as a Westborough ... driver²

(Id.).

In March 2020, NRT interviewed the Westborough Unit drivers for their former jobs. (JT. Exhs. 5, 9). This resulted in NRT hiring the majority of the Westborough Unit drivers.³ In fact, about 73% of the NRT's drivers at Westborough previously drove for First Student and were in the Westborough Unit.⁴ (GC Exh. 5).

D. NRT's Continuity of First Student's Operations at Westborough

The parties stipulated that, "there a substantial continuity of operations between First Student ... and NRT[']s ... business of transporting children for ... Westborough." (JT Exh. 19)(stip. 1). They further agreed that: (1) "First Student and NRT ... are in the same business of providing school bus ... services"; (2) "First Student provided services, and NRT ... currently provides services, to ... Westborough"; (3) "NRT ... employees servicing ... Westborough ... perform the same general job duties as the First Student employees who serviced ... Westborough ..., which is ... transporting ... students"; (4) "[t]he former First Student employees ... employed by NRT ... [at] Westborough ... [who] drive a 77-passenger bus kept the same routes that they had ... [at] First Student"; and (5) "[t]he three former First Student employees ... employed by NRT Bus ... [at] Westborough ... [who] drive a 35-

² The transportation contract required NRT to, "offer employment to the current drivers who meet ... [the position's] qualifications." (JT Exh. 4 at §5.22).

³ NRT's Chief Executive Officer John McCarthy did not recall rejecting any former First Student drivers, who previously drove for Westborough.

⁴ The parties stipulated that, "a majority of the drivers hired by NRT ... servicing ... Westborough [when] ... NRT ... had reached a substantial and representative complement, were previously employed [as drivers] by First Student at ... Westborough ..." (JT Exh. 19)(stip. 5). Although Debbie Jobes is identified as a Westborough Unit member at First Student on GC Exh. 5, she does not appear on the Union's April 2020 dues checkoff list. (GC Exh. 7). Union Business Agent Marks explained that she was on medical leave.

passenger bus kept the same routes that they had ... [at] First Student.” (Id.).

E. Union’s Representation Request

5 On July 14, 2020, the Union sent NRT this recognition request:

On September 1, 2019 the drivers for First Student [at] Westborough ... affiliated with the ... [Union]. Therefore, [the Union] ... represents the members of the NRT Bus Westborough Location in all future collective bargaining matters

[W]e seek to begin negotiations on a collective bargaining agreement as soon as possible....

15 (JT Exh. 6). On July 29, 2020, NRT asserted that, it “has no bargaining obligation.” (JT Exh. 7).

F. Westborough Unit’s Terms and Conditions of Employment

20 Westborough Unit drivers are assigned to NRT’s bus terminal in Hudson, MA,⁵ where it also administers school transportation contracts for: the public schools of Northborough and Southborough; Berlin-Boylston Regional School District; Marlborough Public Schools; and the Assabet Valley Schools. Each school district has a separate contract with different terms and conditions of employment for their respective drivers, which are determined by each district’s

25 bid specifications. Westborough Unit drivers are, as a result, subject to certain terms and conditions of employment that are unique to Westborough, while also subject to other terms and conditions of employment that are the essentially same for all of NRT’s Hudson terminal drivers. These differences are described below.

30 **1. Terms of Employment Specific to the Westborough Unit**

a. Routes, Assignments, Schedules and Equipment

35 Following NRT’s takeover, several terms and conditions of employment remained unique to the Westborough Unit. All buses continued to be identified as belonging to the “Westborough Public Schools,” remained registered in the Town of Westborough, and were equipped with multiple video cameras and GPS. (JT. Exh. 4). The academic calendar (i.e., which sets school closures, vacations, holidays, early release days and bell schedules), driver assignments, routes, bus stops, and school day starting and ending times were set by

40 Westborough. (JT Exh. 4; GC Exh. 12). Westborough Unit drivers also had several local reporting requirements under the transportation contract. (JT Exh. 4 at §2).⁶

⁵ The Hudson terminal is about 12 miles from Westborough, Massachusetts.

⁶ Many of the terms and conditions of employment for the Westborough Unit were legislated by the transportation contract. (JT Exh. 4). Although it is possible that some terms and conditions of employment were boilerplate language that is identical for all bus drivers in area school districts, the record does not distinguish in

b. Hiring, Retention and Training

All drivers are approved by Westborough annually, which retains the right to reject drivers, request their removal and require fitness for duty tests. (Id. at §§5.2–5.4). Westborough requires all drivers to file medical reports stating that they can physically perform their duties. (Id. at §5.5). Westborough has its own safety, drug and alcohol testing, first aide, CPR, seizure and student discipline programs. (Id. at §5.6–5.8). It requires drivers to undergo background, driving and criminal records checks and retains the right perform its own investigations. (Id. at §5.9).

c. Personnel Rules

Westborough requires drivers to follow school-wide personnel and conduct rules, which cover bans on transporting unauthorized persons, eating, drinking, smoking, mobile phone usage and profanity. (Id. at §§5.10–5.12). It requires all drivers to communicate in English, maintain order on the bus, report student incidents to Westborough, and enforce student conduct rules. (Id. at §§5.13–5.15). It requires drivers to follow all routes and stops, and report delays to Westborough. (Id. at §§5.19, 5.21). It maintains rules involving bus cleanliness, residential pickup and drop off windows, school arrival and departure times, late-openings and school cancellations. (Id. at §6.4).

d. Interaction with other Westborough Employees

Westborough assigns bus monitors to the buses driven by Westborough Unit drivers. (Id. at §5.26). Westborough Unit drivers must report student incidents, and relay student and parent complaints, to their principals. (Id. at §§5.13–5.15, 6.9). Westborough Unit drivers are coordinated by Westborough transportation coordinator Cindy Crowley, who creates and adjusts bus routes.⁷

e. Wages

Westborough Unit drivers are paid under the following prevailing wage schedule:

Effective date	Hourly Rate
09/01/2019	\$25.00
09/01/2020	\$30.00
09/01/2021	\$31.00
09/01/2022	\$31.93
09/01/2023	\$32.89

this regard.

⁷ Westborough retains the authority to change routes, add students, change schedules and otherwise manage its transportation system. Crowley relays instructions to NRT Dispatcher Crestwell about 4 times per week.

(JT Exh. 4). The record mostly fails to demonstrate whether non-Westborough drivers at the Hudson terminal are paid differing or identical prevailing wages on the basis of their assigned school district's geography.⁸

5 *f. Seniority*

Westborough maintains a seniority list for its Westborough Unit drivers. NRT assigned Westborough routes on the basis of this Westborough seniority, with the most senior drivers being offered the chance to keep their previous First Student routes.

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2. Common Conditions of Employment for all Hudson Terminal Drivers

The Hudson terminal consists of a drivers' lounge, garage and repair shop, dispatch room, and an office and operations area, which are shared by all drivers. It also has a group meeting room, where safety training occurs.

15

a. Driver Classifications

NRT employs 371 drivers and monitors out of the Hudson terminal, who fill these roles:

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Job Title	Westborough Drivers	Non-Westborough Schools
7D Driver	0	19
Restricted DPU	5 ⁹	5
Charter Driver	0	2
CDL Driver	28 ¹⁰	97
Monitor ¹¹	0	16
Operations – Driver SPED ¹² / Operations – Monitor SPED	0	199
Total:	33	338

(JT Exh. 16).

25 *b. Interactions Amongst Hudson Terminal Employees*

The Hudson terminal also employs safety, maintenance (i.e., mechanics),¹³ and

⁸ Specifically, although the Assabet Valley School drivers are also paid \$30 per hour under prevailing wage law, the records fails to reveal what hourly wage drivers at the Northborough and Southborough, Berlin-Boylston and the Marlborough schools are paid under prevailing wage law.

⁹ The 5 Restricted DPU drivers at Westborough were all former First Student drivers.

¹⁰ Out of the 28 CDL drivers, 22 were former First Student drivers and 6 were not.

¹¹ Monitors do not operate vehicles; they are not subject to drug or driving record screenings.

¹² They are assigned to the "van pool" and drive minivans, which can be parked at their homes. They do not have CDLs and cannot drive 77- or 30-passenger buses. Only the Northborough and Southborough, Berlin-Boylston, Marlborough and Assabet Valley Schools use NRT's van pool drivers. See also (GC Exh. 14).

¹³ The record fails to indicate how often Westborough Unit drivers interact with mechanics. Mechanics

operations department (i.e., dispatchers and supervisors) personnel, who interact with all drivers.¹⁴ The safety department holds new employee orientations at the Hudson terminal for groups of drivers, regardless of their assigned district. Group safety meetings are also provided to drivers on an ongoing basis.¹⁵

c. Common Benefits

Hudson terminal drivers and monitors do not wear uniforms. They are all eligible for attendance bonus, sick leave, life insurance, health, dental, accident insurance, EAP and 401K benefits. They can attend the NRT Christmas party and other social events. Everyone can receive gift cards, *Employee of the Quarter* awards and employee referral monies. Everyone is paid on a weekly basis.

d. Bus Parking

Westborough's buses are often parked in the Westborough lot. Buses can, however, be parked in any of the 4 satellite parking lots near the Hudson terminal, which might lead to some limited collective interaction.¹⁶ See, e.g., (R. Exhs. 6, 13).

e. Extra Work

NRT maintains a Hudson terminal seniority list for all drivers, which is used to distribute charters, extra work and other runs across districts. (R. Exh. 5). If, for example, the Westborough school day is cancelled, NRT may opt to assign certain affected Westborough Unit drivers runs outside of Westborough using its Hudson terminal seniority list. (R. Exh. 10).

f. Human Resources and Centralized Supervision

A central human resources department services all driving personnel at the Hudson terminal. Operations Manager Jackie D'Alio hires all Hudson terminal dispatchers, drivers and monitors, and can fire, transfer, promote, reward, assign and evaluate these employees in coordination with the Human Resources department.¹⁷ Disciplinary investigations and related meetings occur at the Hudson terminal.

III. ANALYSIS

NRT is a successor, which had an obligation to recognize and bargain with the Union.

service buses from all school districts, which are essentially the same.

¹⁴ There are no dispatchers assigned to the Westborough lot. There is no specified dispatcher for Westborough, which can be serviced by all dispatchers.

¹⁵ Drivers attend 8 safety meetings per year to maintain their CDL.

¹⁶ "First Student employees [at] Westborough ... were based out of the Westborough parking lot." (JT. Exh.19)(stip. 4).

¹⁷ By way of contrast, "First Student maintained a trailer at the Westborough parking lot which was staffed with both a supervisor and a dispatcher who directly supervised and dispatched all First Student employees at ... Westborough." (JT Exh 19)(stip. 3).

The single Westborough Unit remained an appropriate bargaining unit.

A. Applicable Law

Successors often retain bargaining obligations to a predecessor's union. *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 37 (1987), citing *NLRB v. Burns Int'l Security Services, Inc.*, 406 U.S. 272, 279 (1972). In determining when a successor has a bargaining obligation, the Board asks: (1) is the successor a substantial continuity of the predecessor?; and (2) did the successor hire a majority of the predecessor's unionized workforce? *NLRB v. Simon DeBartelo Group*, 241 F.3d 207, 210 (2d Cir. 2001), enfg. 325 NLRB 1154 (1998). These questions are viewed from the perspective of the predecessor's employees and ask whether employees would view their job situations as "unaltered?" *Fall River Dyeing*, supra, 482 U.S. at 43, quoting *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 184 (1973). Finally, in order for a bargaining obligation to attach, the predecessor's bargaining unit must remain appropriate.

B. Substantial Continuity of Operations

It is clear that NRT's Westborough operations are a substantial continuity of First Student's operations. Substantial continuity is a factual inquiry, where the totality of the circumstances is examined. *International Union of Petroleum & Indus. Workers v. NLRB*, 980 F.2d 774, 779 (D.C. Cir. 1992). Substantial continuity asks: whether the successor acquired substantial assets of the predecessor; and whether it has continued, without interruption or change, the predecessor's operations. *Fall River Dyeing*, supra, 482 U.S. at 43. The Board gauges:

[W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production processes, produces the same products and basically has the same body of customers.

Harter Tomato Products Co. v. NLRB, 133 F.3d 934, 937 (D.C. Cir 1998), citing *Fall River Dyeing*, supra, 482 U.S. at 43. No single factor is controlling. *Pennsylvania Transformer Technology, Inc. v. NLRB*, 254 F.3d 217, 223 (D.C. Cir. 2001), enfg. 331 NLRB 1147 (2000).

NRT stipulated that it is a substantial continuity. (JT Exh. 19). The record supports this stipulation, inasmuch as both employers performed the same business (i.e., bus services), employed drivers with CDLs and restricted DPU licenses, and served Westborough.

C. Hiring a Substantial and Representative Complement of Drivers

NRT hired a substantial and representative complement of drivers from the Westborough Unit. NRT stipulated that, "a majority of the drivers hired by NRT ... servicing ... Westborough [when] ... NRT ... had reached a substantial and representative complement, were previously employed [as drivers] by First Student at ... Westborough" (JT Exh. 19). The record abundantly supports this stipulation and shows that 73% of Westborough Unit

drivers employed by NRT were employed by First Student at Westborough in the prior school year. (GC Exh. 5).

D. Westborough Unit Remains Appropriate

The Westborough Unit remains appropriate; this is not a close question. Successors are only required to recognize a historical unit if it remains appropriate. *Paramus Ford, Inc.*, 351 NLRB 1019, 1023 (2007). Appropriateness is measured when the bargaining obligation attaches. *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007). The Board's policy is that a, "mere change in ownership should not uproot bargaining units that have enjoyed a history of collective bargaining unless the units no longer conform reasonably well to other standards of appropriateness." *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007).¹⁸ The party challenging a historical unit **bears the heavy burden of showing that the unit is no longer appropriate**. Id. In *Trident Seafoods, Inc. v. NLRB*, 101 F.3d 111 (D.C. Cir. 1996) enfg 318 NLRB 738 (1995), the Court explained that:

[A] successor employer can meet this burden by showing that a historical unit is "repugnant to Board policy[;]" "that "compelling circumstances" are present that "overcome the significance of bargaining history[;]" that the unit is "so constituted as to hamper employees in fully exercising rights guaranteed by the Act[;]" or that the historical units no longer "conform reasonably well to other standards of appropriateness."

Id. at 118; *Deferiet Paper Co. v. NLRB*, 235 F.3d 581, 584 (D.C. Cir. 2000).

For several reasons, I find that NRT did not meet its heavy burden of showing that the Westborough Unit is not appropriate. My rationale is as follows.

1. Policy Favors Continuation of the Westborough Unit

The Board heavily favors finding that the pre-existing Westborough Unit remains appropriate.¹⁹ See, e.g., *Fisher Broadcasting, Inc.*, 324 NLRB 256, 262–263 (1997); *Buffalo Broadcasting Co.*, 242 NLRB 1105, 1105 fn. 2 (1979) ("Board is reluctant to disturb units established by collective bargaining as long as those units are not repugnant to Board policy or ... hamper employees in fully exercising rights guaranteed by the Act."); *Columbia Broadcasting System, Inc.*, 214 NLRB 637, 643 (1974).

2. General Approval of Single School District Units

The Board has routinely found that units of bus drivers, who serve a single school

¹⁸ See also *Indianapolis Mack Sales & Service*, 288 NLRB 1123, 1126 (1988) (historical unit likely remains appropriate if the predecessor recognized it, even if the unit would not be appropriate under Board standards if it were being organized for the first time).

¹⁹ While I note that the bargaining history of the Westborough Unit is limited because the unit was first organized in 2019, this history still produced a viable 5-year collective-bargaining agreement that ran into 2024. (JT Exh. 3).

district, are appropriate (i.e., the Westborough Unit). See e.g., *First Student*, 353 NLRB 512 (2008); *Galloway School Lines*, 321 NLRB 1422 (1996); *Royal Coach Lines*, 282 NLRB 1037 (1987). It explained that:

The Board has long recognized a presumption that a single plant or store unit is appropriate for purposes of collective bargaining unless it has been so effectively merged into a comprehensive unit, or is so functionally integrated, that it has lost its separate identity.

Dean Transportation, Inc., 350 NLRB 48, 58 (2007), enfd. 551 F.3d 1055 (D.C. Cir. 2009). “The party opposing the single-facility unit has the heavy burden of rebutting its presumptive appropriateness” *Trane*, 339 NLRB 866, 867 (2003). Recognition of the Westborough Unit is, as a result, consistent with the Board’s general policy of accepting of single school district units.

3. Westborough Unit Retains a Strong Community of Interest

Several community of interest factors demonstrate that the Westborough Unit remains appropriate. Although NRT asserts that a unit of all drivers from the Hudson terminal is a preferable unit, its contention ignores the longstanding labor relations policy that the Westborough Unit need not be the best unit choice and need only be appropriate, which it is.²⁰

In determining whether a unit is appropriate, the Board seeks to group employees, who have a substantial mutual interest in wages, hours, and other conditions of employment. The Board, as a result, weighs these community of interest factors: (1) bargaining history; (2) integration of operations; (3) centralization of management and administrative control; (4) geographic proximity; (5) similarity of working conditions; (6) skills and functions; (7) common control of labor relations; (8) degree of separate daily supervision; and (9) the degree of employee interchange. *NV Energy, Inc.*, 362 NLRB 14, 16 (2015). In this case, several of the latter factors demonstrate that the Westborough Unit shares a strong community of interest.

a. Bargaining History

The bargaining history of the Westborough Unit, including the successful negotiation of a 5-year contract covering the unit, demonstrates an ongoing community of interest.

b. Integration of Operations and Employee Interchange

Although there is some evidence of integration of operations and employee interchange, these factors mainly demonstrates that the single location Westborough Unit is appropriate. First, the core component of the NRT’s Westborough operation is not integrated and is performed by a discrete group of Westborough Unit employees, who have set daily route assignments within Westborough.²¹ Second, although there is some driver interchange (i.e.,

²⁰ *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950) (“nothing ... requires that the unit ... be the only appropriate unit, or ... most appropriate unit; the Act only requires that the unit be ‘appropriate.’”).

²¹ Although there is some integration at the Hudson terminal of peripheral matters for the 5 school districts

Westborough runs driven by drivers outside of the Westborough Unit) for ancillary runs such as extra work, charter bus runs and absence coverage, this interchange is only a very small percentage of the Westborough Unit's total bus runs. On this point, the record demonstrates that Westborough Unit drivers perform approximately 98% of their own Westborough runs;²² this scarcity of interchange strongly supports the ongoing appropriateness of the single location, Westborough Unit.²³

c. Centralized Management, Administrative Control and Labor Relations

Although management, administrative control and labor relations of the Westborough Unit and the drivers from the other 4 school districts are centralized out of the Hudson terminal (i.e., by D'Alio and human resources), Westborough still retains great shared control over the Westborough Unit. Specifically, Westborough, in its transportation contract, retains final control over these Westborough Unit matters: their daily assignments; their routes; their start, end, drop off and pickup times; their reporting requirements; their bus equipment; their academic calendar (i.e., school closures, vacation periods, holidays, early release days, bell schedules, etc.); their hiring, fitness for duty assessment and retention; their safety and other training requirements; their background and criminal records checks; several Westborough-specific personnel, workplace and conduct rules; and by maintaining a Westborough-specific seniority list, which is used for bidding on annual route assignments. In addition, the Westborough Unit drivers are coordinated by Westborough's transportation coordinator Crowley, who creates, monitors and adjusts their bus routes. In short, the Westborough Unit drivers present a hybrid group, who are dually controlled by Westborough under its broad authority under the transportation contract and by NRT alongside the other Hudson terminal drivers in a centralized way. These community of interest factors, when taken as a whole, neither support nor detract from the appropriateness of the single Westborough Unit, and have

(e.g., bus parking, bus maintenance, the driver lounge area, dispatch and limited training), this ancillary integration is somewhat minor when compared to the fact that the core business of the Westborough Unit (i.e., transporting students) is not integrated to any great degree. Westborough bargained for the ongoing separation of the First Student drivers in its transportation contract with NRT in order to provide bus driver continuity to its main constituents (i.e., parents and students in the school district).

²² Specifically, although NRT avers in its brief that "there are over 100 instances in the 2020/2021 school year where a driver primarily assigned to ... [Westborough] drove a school bus route for a different district" and "over 25 instances wherein a driver from a different district drove a school bus route for ... [Westborough]," these roughly 125 instances are dwarfed by the approximately 11,880 runs driven exclusively for Westborough by members of the Westborough Unit (i.e., a rough calculation of 180 instructional school days in Massachusetts (judicial notice) x 33 Westborough Unit drivers x 2 trips per day for these drivers (to and from school)). This ratio demonstrates deficient interchange.

²³ See, e.g., *A.J. Myers*, 362 NLRB 365 (2015); *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999)(alleged instances of employee interchange is "of little evidentiary value" unless placed in context by the percentage of routes and percentage of employees involved in the interchange.); *Purolator Courier Corp.*, 265 NLRB 659, 661 (1982) (interchange factor met when a whopping 50 percent of work force came within the jurisdiction of other branches on a daily basis, which is not present herein); *P.S. Elliott Services*, 300 NLRB 1161, 1162 (1990) (single-facility presumption rebutted in successor case involving multibuilding cleaning service company where, among other factors "[e]mployees are freely transferred between jobsites and at least 50 percent of the Respondent's employees have been transferred from building to building," which is not remotely the case herein).

been afforded little to no weight in the final analysis.

d. Geographic Proximity

Westborough Unit drivers mainly drive within the confines of Westborough (i.e., not including extracurricular, athletic and charter runs outside the district). Generally, the other drivers at NRT's Hudson terminal drive within the boundaries of their assigned district school districts. I find, as a result, that the geographic proximity factor favors the single Westborough Unit.

e. Similarity of Working Conditions

Westborough Unit drivers have many working conditions that are the same as the other drivers assigned out of the Hudson terminal, and others that are quite different. This hybrid landscape is parsed below.

Regarding similar working conditions, all NRT drivers at the Hudson terminal are: subject to same uniform policy; eligible to receive the same attendance bonuses, life insurance, accident insurance, health, dental, 401K and sick leave benefits; attend group social and holiday events; compensated under the employee referral program; paid weekly; and can participate in the EAP program. NRT maintains a seniority list for Hudson terminal drivers, which is used to allocate charters, extra work and leftover runs at all 5 school districts.

Regarding distinct working conditions, the following terms and conditions of employment are unique to the Westborough Unit: driver assignment procedures, assigned routes, stops, the start and end of the school day are all legislated by Westborough; Westborough has localized reporting requirements for its drivers; Westborough maintains an academic calendar, which sets forth school closures, vacation periods, holidays and early release days, as well as school bell schedules, which its drivers must follow; all drivers must be approved by Westborough annually; Westborough can reject any driver, request the removal of any driver, or to require "a fit for duty test at any time"; and Westborough has its own safety training, drug and alcohol testing, first aide, CPR and other programs. Westborough also requires its drivers to follow its local personnel and conduct rules involving: transporting unauthorized persons; eating, drinking, smoking, mobile phone usage, profanity usage and related conduct; English communication; maintaining bus order, enforcing and applying student conduct rules; reporting student incidents and infractions to Westborough; reporting complaints by school children and/or their parents to principals; cleaning vehicles; and minimum and maximum student residential pick-up times, minimum school arrival times, late-openings and cancellations. Westborough drivers attend Westborough driver meetings and can attend the Westborough-wide events such as the First Day BBQ. Lastly, Westborough Unit drivers are paid in accordance with a prevailing wage schedule, which is based upon Westborough's distinct geography. Finally, Westborough maintains a seniority list for its Westborough Unit drivers and annually assigns routes to drivers based on their Westborough seniority.

I find that, although the Westborough drivers have many of the same working conditions as the other drivers at the Hudson terminal, they also have many unique working conditions.

As a result, the similarity of working conditions factor, which is truly mixed, has been afforded neutral weight and was not considered in the community of interest equation.

f. Skills and Functions

The Westborough Unit has 33 drivers, who perform work as CDL drivers (i.e., who drive full-size school buses) and restricted DPU drivers (i.e., who drive restricted school buses and have Class D driver's license with a restricted School Bus Driver Certificates). The Hudson terminal, on the other hand, employs, in addition to CDL drivers and restricted DPU drivers, 7D drivers, bus monitors (i.e., who do not drive at all), Operations – Driver SPED (i.e., who drive vans and only require Class D licenses) and Operations – Monitor SPED (i.e., who also do not drive). Because the Westborough Unit is limited to drivers who operate larger buses under either CDL or restricted DPU licenses, and the larger unit of Hudson terminal workers has a much broader scope of school transportation employees (i.e., it has several van drivers with limited licenses and many monitors who do not drive at all), the more restricted and specialized nature of the Westborough Unit favors finding that a single unit is appropriate.

g. Degree of Separate Daily Supervision

Westborough Unit drivers are primarily supervised on a daily basis by NRT's D'Alio, who also directly supervises the other drivers and monitors at the Hudson terminal. This factor, therefore, supports finding that the Westborough Unit shares a community of interest with the other Hudson terminal drivers and monitors.

h. Westborough Unit Remains Appropriate

In conclusion, it appears that most community of interest factors support finding that the Westborough Unit remains appropriate. None of these factors even remotely demonstrate that the single Westborough Unit is repugnant to the Act, which is the substantial hurdle that NRT had to meet to prove its point. On this basis, I find that NRT failed to demonstrate that the continuation of the Westborough Unit is repugnant to Board policy, or would otherwise hamper employees in fully exercising rights their § rights.

E. Synthesis

NRT is a successor, which retained its bargaining obligation to the Union regarding the Westborough Unit. Its operations are a substantial continuity, it hired a majority of First Student's workforce in the Westborough Unit, and the Westborough Unit remains appropriate. It, therefore, violated the Act, when it rejected the Union's recognition and bargaining request.

Conclusions of Law

1. NRT is an employer engaged in commerce within the meaning of §2(2), (6), and (7) of the Act.

2. The Union is a §2(5) labor organization.

3. At all times material herein, the Union has been the designated bargaining representative of NRT's employees in the following appropriate unit:

All full-time and regular part-time school bus drivers (including 7-D van drivers) assigned to the Westborough Public Schools; but excluding all other employees, clericals, guards and supervisors as defined by the Act.

4. Since at least September 11, 2020, NAP has violated §8(a)(5) by refusing to recognize the Union as the exclusive representative of the unit and accept its bargaining demand.

5. This unfair labor practice affects commerce within the meaning of §2(6) and (7).

Remedy

Having found that NRT committed unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that it violated §8(a)(5) by failing and refusing to recognize and bargain collectively with the Union as the collective-bargaining representative of an appropriate bargaining unit of employees, it shall recognize, and, upon request, bargain with the Union as the exclusive representative of the Westborough Unit, and, if an understanding is reached, embody the understanding in a signed agreement. It shall also post a notice to all employees in accordance with *J. Picini Flooring*, 356 NLRB 11 (2010).

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended²⁴

ORDER

NRT Bus, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from

a. Failing and refusing to recognize and collectively bargain with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time school bus drivers (including 7-D van drivers) assigned to the Westborough Public Schools; but excluding all other employees, clericals, guards and supervisors as defined by the Act.

²⁴ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

b. In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by §7 of the Act.

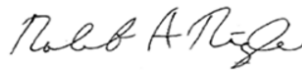
2. Take the following affirmative action necessary to effectuate the Act's policies

a. Recognize and on request, bargain with the Union as the exclusive collective-bargaining representative of the above-described unit of employees and, if an understanding is reached, embody it in a signed agreement.

b. Within 14 days after service by the Region, post at its Hudson, Massachusetts facility copies of the attached notice marked "Appendix."²⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 11, 2020.

c. Within 21 days after service by the Region, file with the Regional Director for Region 1 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated Washington, D.C., August 12, 2021.



Robert A. Ringler
Administrative Law Judge

²⁵ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT fail and refuse to recognize and bargain with the International Brotherhood of Teamsters, Local 170 (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All full-time and regular part-time school bus drivers (including 7-D van drivers) assigned to the Westborough Public Schools; but excluding all other employees, clericals, guards and supervisors as defined by the Act.

WE WILL NOT in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL recognize and, upon request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the appropriate unit described above and, if an understanding is reached, place it in a signed agreement.

NRT BUS, Inc.
(Employer)

Dated _____ **By** _____
(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's

Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

10 Causeway Street, 6th Floor, Boston, MA 02222-1072
(617) 565-6700, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/01-CA-268388 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (617) 565-6700.